

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

DELVIN M. NURSE,)
)
Plaintiff)
) No. 3:14-1120
v.) Judge Campbell/Brown
) **Jury Demand**
DEPARTMENT OF VETERAN AFFAIRS,)
et al.,)
)
Defendants)

TO: THE HONORABLE TODD J. CAMPBELL

REPORT AND RECOMMENDATION

For the reasons stated below, the Magistrate Judge recommends that this case be dismissed without prejudice for failure to obtain service of process within 120 days under Federal Rule of Civil Procedure 4(m).

BACKGROUND

Plaintiff, with the aid of counsel, filed a suit against the Department of Veteran Affairs on May 6, 2014 (Docket Entry 1). A case management conference was set in the matter on July 15, 2014 (Docket Entry 2). At the case management conference on July 15, 2014, counsel for the Plaintiff appeared, but there was no representative for the Defendants because service of process had not been accomplished (Docket Entry 4). Plaintiff provided an explanation of why service of process had not been obtained, and the Magistrate Judge admonished him that service of process must be obtained within 120 days of May 6, 2014, or the Magistrate Judge

would recommend the case be dismissed for failure to obtain service of process under Federal Rule of Civil Procedure 4(m).

Plaintiff's counsel has taken no apparent action to obtain service of process or request additional time. There is no evidence service of process has been obtained.

LEGAL DISCUSSION

Under Federal Rule of Civil Procedure 4(m) a plaintiff has 120 days within which to obtain service of process and requires that the court dismiss the action without prejudice after notice to the plaintiff. The Court has the authority for good cause shown to extend the time of service for an appropriate period. In this case, Plaintiff was notified of the need to obtain service of process within 120 days of May 6th. Since the entry of the scheduling order the Plaintiff has apparently taken no action to either obtain service of process or to request additional time.

Rule 4(m) provides specific instructions for service on the United States, its agents, corporation, officers, or employees. Service is not difficult. As of the date of this report and recommendation 120 days has now passed with neither proof of service nor a request for additional time.

RECOMMENDATION

For the reasons stated above, the Magistrate Judge recommends this case be dismissed without prejudice for failure to obtain service of process within the time prescribed by Rule 4(m) of the Federal Rules of Civil Procedure.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has **14 days** from receipt of this Report and Recommendation in which to file any written objections to this Recommendation with the District Court. Any party opposing said objections shall have **14 days** from receipt of any objections filed in this Report in which to file any responses to said objections. Failure to file specific objections within **14 days** of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. *Thomas v. Arn*, 474 U.S. 140 106 S. Ct. 466, 88 L.Ed.2d 435 (1985), *Reh'g denied*, 474 U.S. 1111 (1986).

ENTERED this 9th day of September, 2014.

/s/ Joe B. Brown
JOE B. BROWN
United States Magistrate Judge